

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
Northern District

AUGUST TERM, 2008

State of New Hampshire

v.

Michael Addison

No. 07-S-0254

STATE'S MOTION *IN LIMINE* NO. 7 (PENALTY PHASE):

**MOTION TO PRECLUDE THE DEFENSE FROM MAKING ANY RELIGIOUS-
BASED ARGUMENTS IN ITS OPENING STATEMENTS OR CLOSING
ARGUMENTS IN EITHER PHASE OF THE SENTENCING STAGE**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and moves *in limine* to preclude the defense from making any religious-based arguments in its opening statements or closing arguments in either the eligibility or sentence selection phase of the sentencing proceedings. In support of this motion, the State says as follows:

1. A Hillsborough County Grand Jury charged the defendant with one count of capital murder arising from the shooting death of on-duty Manchester Police Officer Michael Briggs on October 16, 2006. The State timely filed a notice of intent to seek the death penalty for the defendant in connection with the charged capital offense.

2. The defendant's capital murder trial is scheduled to commence before this Court on September 22, 2008. Should the jury find the defendant guilty of the sole count of capital murder, the trial will then proceed to the capital penalty stage. Those

sentencing proceedings will be bifurcated into two separate phases: that of eligibility and then that of sentence selection. For the eligibility phase, in order to proceed to the sentence selection phase the jury unanimously must find proven beyond a reasonable doubt at least one of three mental state statutory aggravating factors relied upon by the State and at least one of two additional statutory aggravating factors relied upon by the State. In the sentence selection phase, the jury will hear evidence regarding non-statutory aggravating factors timely noticed by the State and, expectedly, mitigating factors set forth by the defense.

3. The Court will permit both sides to make an opening statement at the beginning of, as well as closing argument at the conclusion of, each phase of the sentencing proceedings. See RSA 630:5, III. The State at this time moves to preclude the defense from making any religious-based arguments in its opening statements and closing arguments.¹

4. "It is well settled that great latitude is accorded counsel in closing argument, wherein [counsel] may summarize and discuss *the evidence and draw reasonable inferences therefrom.*" State v. Sands, 123 N.H. 570, 597 (1983) (emphasis added); see State v. Cote, 143 N.H. 368, 374 (1999). That being said, arguments to the jury by either side in a criminal trial are not without limitations. See Cote, 143 N.H. at 374; State v. Dearborn, 114 N.H. 457, 461 (1974). In the end, the Court retains the discretion to determine whether particular areas of argument are appropriate. See Cote,

¹ This motion admittedly is anticipatory as to arguments that the State believes the defense may attempt to advance at the sentencing stage. Given that at this point the State has received from the defense neither full reciprocal discovery nor a list of proposed mitigating factors, and also given the inherent uncertainty of trial, the State by filing this and other motions at this time neither concedes any unforeseeable issues nor believes that it is foreclosed from raising additional motions in the future as possible additional issues come to light.

143 N.H. at 374; see also Dearborn, 114 N.H. at 461 (“[t]he court may, within its discretion, control the length and extent of oral argument during trial concerning the admission and exclusion of evidence”).

5. The State does not intend to make any appeal to religious mores, Biblical rhetoric or analogy, or similar religious-based arguments at any point during the trial, including during both phases of the sentencing proceedings. Even if such arguments were not erroneous and were proper, they have no legitimate place in a criminal trial, particularly one of the magnitude of a capital case.

6. Nor should the Court permit the defense to make any religious-based arguments. In language that applies with equal force here, the California Supreme Court in People v. Sandoval, 841 P.2d 862 (Cal. 1992) explained why such arguments by either side has no permissible role to play at trial:

Penalty determinations are to be based on the evidence presented by the parties and the legal instructions given by the court. Reference by either party to religious doctrine, commandments or biblical passages tending to undermine that principle is improper. We recognize that the defense must be allowed some latitude in its presentation of mitigating evidence. Nevertheless, we do not understand that latitude to include exhortation of religious canons as a factor weighing against the death penalty. If the defense were to present such argument, it would be subject to objection by the prosecution and possible like-kind argument in rebuttal. What is objectionable is reliance on religious authority as supporting or opposing the death penalty. The penalty determination is to be made by reliance on the legal instructions given by the court, not by recourse to extraneous authority. We do not mean to rule out all reference to religion or religious figures so long as the reference does not purport to be a religious law or commandment.

People v. Sandoval, 841 P.2d at 883-84 (citations omitted); see, e.g., State v. Reynolds, 195 A.2d 449, 455 (N.J. 1963) (addressing defense religious-based summation arguments, “Of course, defense counsel may urge that mitigating circumstances exist in